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IN RE PEDRO J. C.\*  
(AC 36869)

Gruendel, Keller and Flynn, Js.

*Argued November 12—officially released December 16, 2014\*\**

(Appeal from Superior Court, judicial district of  
Fairfield, Juvenile Matters at Bridgeport, B. Kaplan, J.)

*Kathryn Madison*, law student intern, with whom  
was *Carroll Lee Lucht*, for the appellant (petitioner).

*Michael Besso*, assistant attorney general, with  
whom, on the brief, were *George Jepsen*, attorney gen-  
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(Commissioner of Children and Families).

KELLER, J. During the past few years, tens of thousands of minor children have been caught crossing the United States southern border, causing a problematic surge of illegal immigration. More than three-quarters of the children are from three countries: El Salvador, Guatemala and Honduras. A significant portion of them are boys between fifteen and seventeen years of age. Many of these unaccompanied minors have been placed with sponsors, usually parents or relatives, where they remain while immigration proceedings are being processed by the United States Department of Homeland Security (DHS).<sup>1</sup> The seventeen year old petitioner, Pedro J. C., who is from Guatemala, is one of these children.

The petitioner appeals from the judgment of the trial court, *B. Kaplan, J.*, adjudicating him neglected and denying his motion for a best interest finding. The court's judgment followed a consolidated hearing on a neglect petition brought by the petitioner and the motion for a best interest finding brought by the petitioner. The claims raised in this appeal concern only the court's denial of his motion for a best interest finding, in which the petitioner requested that the court make two specific findings necessary for his contemplated application to federal immigration officials for abused, neglected, or abandoned special immigrant juvenile status (SIJS) under title 8 of the United States Code, § 1101 (a) (27) (J) (Supp. 2012), part of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.).<sup>2</sup> On appeal, the petitioner claims that the court relied on insufficient evidence and applied incorrect legal standards when it failed to find, as he had requested, that (1) reunification with one or both of the petitioner's parents is not viable due to the fact that he has been neglected, and (2) it is in the best interest of the petitioner to remain in the United States and not to be returned to his home country of Guatemala. We agree with the petitioner and reverse the judgment of the trial court insofar as it denied his motion.

The following facts, as found by the trial court or as are apparent in the record, and procedural history are relevant here. The undisputed facts in the record include the facts alleged in the amended petition and accompanying summary of facts, which are deemed admitted by the respondent mother, Dominga C.A. (respondent), who was defaulted for failure to appear after confirmation of notice by publication.<sup>3</sup>

The petitioner, a child under the age of eighteen, was born in 1997 in Baja Verapaz, Guatemala. His family is of Mayan ethnicity, and members of that group suffer from discrimination in Guatemala. The petitioner's grandfather was killed in an anti-Mayan massacre during the Guatemalan civil war in the 1980s. The family did

not have much money. The petitioner's father owned a small piece of land where he grew crops and kept animals. He earned barely enough to feed the family. The respondent was primarily a homemaker. The family's small home was made out of mud and the petitioner shared a small room with three of his brothers. In 2009, when the petitioner was twelve years old, his father left Guatemala and moved to Connecticut in order to send financial support back to the family in Guatemala. One year later, the petitioner's father was killed in an accident involving a train.

After his father died, the respondent was unable to provide adequately for her large family, including the petitioner and his siblings. There was not enough money or enough food to eat, and the respondent had trouble paying tuition for all of the children to attend school. Working in the fields exhausted the respondent. Because the petitioner was the oldest son who still lived at home, he would usually go alone to work in the fields, where he performed tasks such as caring for animals, planting, and harvesting. He planned to work for half a day so he could still attend school, but sometimes he had to spend all day working and did not attend school.

To reach his family's land, the petitioner had to cross a field that belonged to an older neighbor who had fought against the Mayans during the civil war. The neighbor did not like it when the petitioner crossed his field and often yelled at and insulted the petitioner. Once he threatened to kill the petitioner. The petitioner was afraid, but it was difficult to avoid crossing the neighbor's land. In addition, people from another village did not like the petitioner's family. The respondent rarely left the house because she was fearful, but the petitioner felt he was in the most danger because he had to leave home to work in the field. The petitioner fears he will be harmed if he returns to Guatemala.

In October, 2012, the petitioner told the respondent that he was afraid to continue living in Guatemala, where he felt surrounded by people who threatened him. His adult siblings lived close to the respondent's house, so he felt he had nowhere safe to go. He wanted to go to the United States to get an education, make a better life, and support the family back in Guatemala. The respondent, although afraid something could happen to the petitioner on the way, borrowed approximately \$3000 to pay a person known as "a coyote"<sup>4</sup> to take the petitioner to the United States illegally. The petitioner embarked on this journey, accompanied mostly by strangers from another village and one neighbor, Don G. At times, he did not have enough to eat. He was often fearful of failing to be attentive and losing contact with his travel companions. He was unable to sleep because he was terrified of being left behind. The trip to the United States-Mexico border took fifteen

days, and then the petitioner waited at the border for one month before attempting to cross it. He waited with other migrants in a house in a place he did not know.

Finally, in November, 2012, it was the petitioner's turn to cross the border into Arizona with Don G. and some of the strangers in his group. After crossing, the group walked for five days, climbing steep, rocky mountains and crossing a desert. The petitioner was very tired and thirsty. One night, as the group stopped to rest, officers with the United States Border Patrol found them and the petitioner was arrested. One officer grabbed him roughly and hurt his arm. The border patrol officers took the petitioner to a jail with a holding area for children, so he was separated from his neighbor, Don G. Even though the officials said they would help the petitioner, he was very afraid and could not stop crying. After he spent two days in Arizona, the petitioner was put on a plane and sent to a home for children in Texas. He continued to be fearful because he did not know what was happening or where the officials were taking him.

In Texas, federal authorities placed a call to the respondent in Guatemala. She was asked if there was anyone in the United States who could take care of the petitioner. The respondent told authorities of a godfather, but when this person was contacted, he declined to take care of the petitioner. Eventually, the respondent contacted the petitioner's cousin, MacDonal J., an undocumented alien living in Connecticut, who agreed to let the petitioner live with him.

The petitioner was released to the sponsorship of MacDonal J. by the Office of Refugee Resettlement, Division of Unaccompanied Children's Services, of DHS in February, 2013, and sent to Connecticut.<sup>5</sup> MacDonal J. was required to execute a Sponsor Care Agreement, promising, inter alia, to provide for the physical and mental well-being of the petitioner; to keep the petitioner's whereabouts known to the local Immigration Court or the Board of Immigration Appeals, and DHS; to ensure the petitioner's presence at all future proceedings before the DHS/Immigration and Customs Enforcement (ICE); to ensure the petitioner reports to ICE for removal from the United States if an immigration judge issues a removal or voluntary departure order; and to notify local law enforcement or the state or local child protective services if the petitioner has been or is at risk of being abused, abandoned, neglected, or if he learns that the petitioner has been threatened, sexually or physically abused or assaulted, or that the petitioner has disappeared, been kidnapped or run away. Most significantly, the Sponsor Care Agreement requires that the sponsor "make best efforts to establish legal guardianship with your local court within a reasonable time."

The petitioner, pursuant to General Statutes § 46b-129 (a), filed a petition in the Superior Court for Juvenile

Matters at Bridgeport on July 29, 2013, alleging that he was a neglected and uncared for child.<sup>6</sup> As required by § 46b-129 (a), the Commissioner of Children and Families (commissioner) was notified of the time and place of the initial hearing on the petition.<sup>7</sup> Subsequently, the petitioner filed a motion for leave to amend his petition, which was granted by the court. The amended, operative petition alleged two grounds for neglect, claiming that, pursuant to General Statutes § 46b-120 (6) (B) and (C), the petitioner was denied proper care and attention, physically, educationally, emotionally or morally and that he was being permitted to live under conditions, circumstances or associations injurious to his well-being. The summary of facts annexed to the petition contained affidavits of the petitioner and his cousin, MacDonal J., in support of the neglect allegations. As the proposed disposition upon his petition, the petitioner requested that the court order that his custody and guardianship be vested in MacDonal J. After the filing of the petition, the court ordered the commissioner to conduct a home study of MacDonal J.<sup>8</sup>

Trial on the petition was scheduled for April 28, 2014. On the first day of trial, the petitioner filed a motion for a best interest finding, in which he proposed that the court make specific findings that are required to be submitted with his application to the United States Citizenship and Immigration Services (USCIS) for SIJS pursuant to 8 U.S.C. § 1101 (a) (27) (J) (Supp. 2012). The motion was a preliminary step in the petitioner's efforts to seek relief from deportation by obtaining SIJS.<sup>9</sup> Obtaining such status first requires that a state juvenile court find that (1) the petitioner is neglected, (2) reunification with the respondent is not viable due to neglect, and (3) it is not in his best interest to return to his home country.

The neglect petition and motion for a best interest finding were heard in a consolidated manner. At the beginning of the hearing, the court found that the petitioner's father was deceased, noted that a default previously had been entered against the respondent for failure to appear, and then immediately entered a neglect adjudication upon her default. The commissioner stipulated to the neglect adjudication. The court then commenced a contested hearing on the dispositional phase of the neglect petition and the motion.<sup>10</sup> The petitioner called himself, MacDonal J., and Monarae Scales, a licensed clinical social worker and child and family therapist, as witnesses. The commissioner called James Craig, the social worker with the Department of Children and Families (department) assigned to conduct the home study. The department's "Court Update," signed by Craig, Nadine Losquadro, a department social work supervisor, and Jill West, a department program manager, made no recommendation as to the appropriate custodial disposition.

At the conclusion of the hearing, the court stated its decision orally on the record.<sup>11</sup> The court acknowledged the history of repression and resentment toward the Mayan people in Guatemala, but indicated that “there’s nothing that this court can do.” The court acknowledged that it previously had entered a neglect adjudication by default,<sup>12</sup> but then commented on the validity of some of the neglect allegations involving the respondent’s care of the petitioner while he was in Guatemala. The court did, however, find that “if you put somebody in the care of an unknown person to go on a long and dangerous trip into a country where you’re not sure you’re going to be, I suppose that could be neglect. . . . So, we do have an adjudication of neglect.” Later on, the court noted that “[a]lthough, in my mind, I do have some concerns about that adjudication, it’s there and I’m going to let the adjudication stand. I’m going to find that the child has been neglected.”

The court found that the neighbor who owned land adjacent to the field on which the petitioner worked made threats toward and harassed the petitioner, and that the petitioner had attended school only on a part-time basis so that he could work and survive in Guatemala. The court also found that the respondent was “loving and would take him back,” a finding supported by the petitioner’s own testimony.<sup>13</sup>

As to the disposition on the neglect petition, the court ruled in favor of the petitioner. The court stated: “The other concern that I have is, in his best interest. He’s seventeen years old. He doesn’t want to be placed in [department] custody. I have to do what I feel is in his best interest. The court is going to find it’s in the child’s best interest that custody and guardianship of the child be vested in MacDonal J., whom I find to be—based on his actions and the care and affection that he’s shown for his cousin, and the fact that he stepped [up] as a parent, is a suitable and worthy caretaker. . . . I’m going to transfer custody and guardianship to his cousin. I’m going to find that it’s in his best interest . . . .”

The court then denied the petitioner’s motion for a best interest finding and declined to make the two SLJS findings requested by the petitioner, which were that (1) reunification with one or both parents is not viable due to the fact that the petitioner has been neglected, and (2) it is in the best interest of the petitioner to remain in the United States and not to be returned to his home country of Guatemala. Although the court indicated that it had found the petitioner neglected and that it was in his best interest that custody and guardianship be transferred to his cousin, the court stated, “I believe [the respondent] would take him back and take care of him. She did what she thought was best to send him out of the country, and if he came back there she would take care of him. . . . I could not find that

reunification with [the respondent] was not in his best interest. I cannot find that it's in his best interest to remain in the United States and not be returned because that doesn't comply with the facts. He would be treated no differently than anyone else if he went back, and his main concern [is] his threats with [the neighbor]. [A]ccording to his cousin, these threats were never effectuated against anyone even though [the neighbor] made them often." This appeal followed.

## I

The petitioner's first claim on appeal is that the court's refusal to find that reunification with the respondent is not viable due to the fact that the petitioner has been neglected was erroneous as a matter of law because the court ignored the facts underlying the default neglect adjudication and failed to apply Connecticut law. We agree that this finding is clearly erroneous because it is legally insufficient on the basis of the adjudicatory facts found by the court, and as a legal conclusion, it is internally inconsistent with the court's decision on the neglect petition, which adjudicated the petitioner neglected as alleged in his petition upon the default of the respondent, and ordered a disposition of transfer of custody and guardianship to MacDonal J.

We begin by setting forth the applicable standards of review. "When considering a challenge to the sufficiency of the evidence, the function of an appellate court is to review the findings of the trial court, not to retry the case. . . . [W]e must determine whether the facts set out in the . . . decision are supported by the evidence or whether, in light of the evidence and the pleadings in the whole record, those facts are clearly erroneous. . . . We also must determine whether those facts correctly found are, as a matter of law, sufficient to support the judgment. . . . [W]e give great deference to the findings of the trial court because of its function to weigh and interpret the evidence before it and to pass upon the credibility of witnesses . . . ." (Internal quotation marks omitted.) *In re Kamari C-L.*, 122 Conn. App. 815, 824, 2 A.3d 13, cert. denied, 298 Conn. 927, 5 A.3d 487 (2010).

Although our standard of review for orders in neglect proceedings is normally limited to whether the court's factual findings were clearly erroneous, and whether the court correctly applied the law and could reasonably have concluded as it did, this deferential standard of review is not without limits. There are instances in which the trial court's orders warrant reversal because they are logically inconsistent rulings. See *In re Joseph W.*, 301 Conn. 245, 264–65, 21 A.3d 723 (2011) (court could not deny motion to open judgment adjudicating neglect and subsequently permit respondent to contest that adjudication); *Kaplan & Jellinghaus, P.C. v. Newfield Yacht Sales, Inc.*, 179 Conn. 290, 292, 426 A.2d 278 (1979) ("[a] trial court's conclusions are not erroneous

unless they violate law, logic, or reason or are inconsistent with subordinate facts in the finding”).

As previously noted, this case also involves the interpretation of federal immigration law pertaining to the attainment of SIJS. “The application of a statute to a particular set of facts is a question of law. We therefore review the petitioner’s claim under the plenary standard of review. . . . The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.” (Citation omitted; internal quotation marks omitted.) *In re Nasia B.*, 98 Conn. App. 319, 328, 908 A.2d 1090 (2006); see also General Statutes § 1-2z. Neither the petitioner nor the commissioner has claimed that 8 U.S.C. § 1101 (a) (27) (J) (Supp. 2012), as it pertains to this case, is ambiguous.

As previously discussed, the petitioner’s motion for a best interest finding was part of his effort to obtain SIJS pursuant to 8 U.S.C. § 1101 (a) (27) (J) (Supp. 2012). Title 8 of the United States Code is a codification of the Immigration Act of 1990. Section 1101, as amended in 1997, sets forth a procedure for classification of certain aliens as special immigrants who have been “declared dependent on a juvenile court” or “legally committed to, or placed under the custody of, a state agency or department or an individual or entity appointed by a state or juvenile court located in the United States.” 8 U.S.C. § 1101 (a) (27) (J) (i). “Congress created this classification to protect abused, neglected, and abandoned unaccompanied minors through a process that allows them to become permanent legal residents. . . . A minor who obtains [SIJS] status may become a naturalized United States citizen after five years.” (Citations omitted.) *In re Y.M.*, 207 Cal. App. 4th 892, 915, 144 Cal. Rptr. 3d 54 (2012). “While the federal government has exclusive jurisdiction with respect to immigration . . . including the final determination whether an alien child will be granted permanent status . . . state juvenile courts are charged with making a preliminary determination of the child’s dependency and his or her best interests, which is a prerequisite to an application to adjust status as a special immigrant juvenile.” (Citations omitted.) *Matter of Mario S.*, 38 Misc. 3d 444, 451, 954 N.Y.S.2d 843 (N.Y. Fam. Ct. 2012). As a prerequisite to applying for SIJS, federal law requires applicants to submit an order from a state court finding that (1) the court has jurisdiction to make judicial determinations about the care and custody of juveniles; (2) the child has either been declared “dependent” by the juvenile court, or has been “legally committed to, or placed under the custody of, an agency or department of a State, or an individual or

entity appointed by a State or juvenile court located in the United States”; (3) the child’s “reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law”; and (4) it would not be in the child’s best interests “to be returned to [the child’s] or parent’s previous country of nationality or country of last habitual residence . . . .” 8 U.S.C. § 1101 (a) (27) (J) (i) and (ii) (Supp. 2012).

In the event that the court granted his petition and appointed MacDonal J. as his guardian, the petitioner sought to have the court make two additional findings: (1) that reunification with one or both of the petitioner’s parents is not viable due to the fact that the petitioner has been found neglected;<sup>14</sup> and (2) that it would be in the petitioner’s best interest to remain in the United States and to not be returned to his home country of Guatemala. See 8 U.S.C. § 1101 (a) (27) (J) (i) and (ii) (Supp. 2012).

The state juvenile court must base its decision on state law, not on policy considerations or a desire to determine worthy candidates for citizenship. See *Leslie H. v. Superior Court*, 224 Cal. App. 4th 340, 344, 168 Cal. Rptr. 3d 729 (2014). Further, the juvenile court must not concern itself with whether the “juvenile’s application constitutes a potential abuse or misuse of the [SIJS] provisions . . . .” *Matter of Mario S.*, supra, 38 Misc. 3d 456. After a juvenile court makes the required preliminary findings, they do not automatically confer any immigration status on SIJS applicants. The findings are one step in the application process. USCIS determines whether the applicant meets the requirements for SIJS under federal law, and its decision whether to grant SIJS is discretionary. See 8 U.S.C. § 1101 (a) (27) (J) (iii) (Supp. 2011).

The petitioner alleged and proved, upon the default of the respondent, that he was neglected because she failed to protect him or help him cope with the threats and harassment that he experienced in Guatemala. The court also agreed that “if you put somebody in the care of an unknown person to go on a long and dangerous trip into a country where you’re not sure you’re going to be, I suppose that could be neglect.” The court acknowledged that the petitioner was subjected to harassment and threats in Guatemala based on his Mayan ethnicity, which caused him emotional stress. The court, however, found that he “is no different than any other child his age in the community. The people that hate them hate them, and there’s nothing that this court can do.” Similarly, the court described the fact that the petitioner missed school to perform age inappropriate labor in the fields as “what he did to help survive in Guatemala.”

The petitioner is correct in his assertion that after the court adjudicated him neglected upon a default,

which was based on the allegations in his verified complaint and summary of facts, it inappropriately reconsidered the adjudication of neglect and applied an improper standard of neglect. Having adjudicated the petitioner neglected under Connecticut law, it was inappropriate for the court to revisit the undisputed allegations which formed the factual basis for its neglect adjudication and compare the petitioner's neglected status to other children in his Guatemalan community. First, there was no evidence of what had occurred with other children in the petitioner's home country. Second, there is no basis in law for a denial of a finding of neglect based on the fact that similarly situated children also are being neglected. The court found neglect, then excused it due to the petitioner's country of origin. While Connecticut law does specify that neglect must occur "for reasons other than being impoverished"; General Statutes § 46b-120 (6); it does not excuse requiring a child to miss school, commencing at the age of twelve, in order to perform hard labor and serve as the main support of the family; exposing the child to constant threats and harassment; sending a child on a dangerous journey, guided and surrounded by strangers, without a plan for what happens when the child arrives; and failing to provide him with any financial support since his date of departure from Guatemala.<sup>15</sup>

The court also found that the petitioner's reunification with the respondent was viable regardless of the neglect he had endured because it believed she would take him back and take care of him. This was the court's sole basis for finding that reunification with the respondent was viable. The SIJS statute does not define the term "viable." When a statutory term is not defined, or cannot be ascertained by means of related statutory provisions, courts must apply its plain and ordinary meaning. See *Lane v. Commissioner of Environmental Protection*, 136 Conn. App. 135, 148, 43 A.3d 821 (2012) ("[i]t is a cardinal rule of statutory construction that statutory words and phrases are to be given their ordinary meaning in accordance with the commonly approved usage of the language"), *aff'd*, 314 Conn. 1, 100 A.3d 384 (2014). "To ascertain the commonly approved usage of a word, we look to the dictionary definition of the term." (Internal quotation marks omitted.) *Id.* Merriam-Webster's Collegiate Dictionary (11th Ed. 2012) defines "viable" as "capable of working, functioning or developing," or "having a reasonable chance of succeeding."

Reunification under Connecticut and federal child protection law is a term of special legal significance.<sup>16</sup> We decline to give it its ordinary meaning, and in construing the meaning of "reunification" in the SIJS provisions, we interpret the word in relation to other statutes. See General Statutes § 1-2z. Upon an adjudication of neglect, reunification requires something more than a parent's willingness to have a child return home.<sup>17</sup> It

requires a willingness and effort on the part of the parent to remedy the conditions, circumstances and parenting deficiencies which led to the child being found neglected, as well as a plan to address them, developed with orders directed by the court to the commissioner and the parent. When a child is placed in the custody of the commissioner either temporarily or upon an adjudication of neglect, there is an explicit requirement that a parent be given “specific steps” to accomplish to facilitate the return of the child to the custody of the parent. See *In re Justice V.*, 111 Conn. App. 500, 507, 959 A.2d 1063 (2008), cert. denied, 290 Conn. 911, 964 A.2d 545 (2009); General Statutes § 46b-129 (b).<sup>18</sup>

“[The] right to family integrity is not absolute. Our courts have long recognized that the state’s intervention in family matters is justified when it is found to be in the best interest of the child. . . . Our statutes authorize such intervention when it is found, inter alia, that a child has been neglected or uncared for. . . . From a child’s perspective, family integrity consists of nurturance and protection. It is not conceptual; rather it is practical and tangible, moment by moment.” (Citations omitted; internal quotation marks omitted.) *In re Tayquon H.*, 76 Conn. App. 693, 699–700, 821 A.2d 796 (2003). There are well established, mandated procedures to promote reunification once a child has been adjudicated neglected, and they do not support sending a neglected child home merely because the parent in whose custody the child was neglected desires the child’s return. In order to make reunification with the respondent viable under state law, the court should have committed the petitioner to the custody of the commissioner, found that disposition to be in his best interests, and issued specific steps to the commissioner and the respondent to facilitate reasonable efforts toward a safe and successful reunification prior to the child’s attaining the age of eighteen, at which point the court would no longer have any authority to direct the care and custody of the petitioner. See *In re Jose B.*, 303 Conn. 569, 581–82, 34 A.3d 975 (2012) (court lacked statutory authority to adjudicate petitioner neglected after his eighteenth birthday or to provide petitioner with dispositional relief pursuant to § 46b-129 [j]).

After a judicial determination that a child or youth<sup>19</sup> is neglected, the court has available four possible options from which to choose regarding custody of the child. They are (1) to commit the child or youth to the commissioner; (2) to vest such child’s or youth’s legal guardianship in any private or public agency permitted by law to care for neglected, uncared-for or abused children or youths, or with any other person or persons found to be suitable and worthy of such responsibility by the court, including, but not limited to, any relative of such child or youth by blood or marriage; (3) to vest such child’s or youth’s permanent legal guardianship as defined in General Statutes § 45a-604 in any person

or persons found to be suitable and worthy of such responsibility by the court; or (4) place the child or youth in the custody of the parent or guardian with protective supervision by the commissioner subject to conditions established by the court. See General Statutes § 46b-129 (j) (2).

In this case, the commissioner did not recommend or advocate for any particular custodial option.<sup>20</sup> The court in this case chose the second option as being in the petitioner's best interest and transferred custody and guardianship to MacDonal J. Such a disposition deprived the court of continuing jurisdiction to promote the reunification with the respondent it subsequently found viable. A transfer of guardianship to someone other than a parent results in the cessation of any requirement that reunification efforts be made, and we fail to see how reunification, when contemplated in state child protection proceedings, remains viable when no state agency is authorized to make reasonable efforts toward reunification and the petitioner, who will attain the age of eighteen on March 1, 2015, his newly appointed guardian, MacDonal J., and the respondent do not desire it. A decision to remove a child from parental custody in a neglect proceeding is not always subject to periodic judicial review to assess the well-being of the child and to approve a permanency plan for the child's care and custody, whether that be reunification with the parent, adoption, a transfer of guardianship, or long-term foster care within a year of removal. "The periodic judicial review described in § 46b-129 applies only if the child is committed to the custody of the department. The legislature . . . did not contemplate mandatory, periodic judicial review of cases in which custody, rather than ordered as a commitment of the child to [the department, has] been vested by the court in an appropriate third party . . . ." (Emphasis omitted; internal quotation marks omitted.) *Fish v. Fish*, 285 Conn. 24, 83, 939 A.2d 1040 (2008). Once the court decided to transfer custody and guardianship to MacDonal J., the only way reunification would be restored to viability would be if the respondent opposed that dispositional status and either appealed or subsequently filed a petition to reinstate her guardianship of the child. General Statutes § 46b-129 (n). There was no evidence in the record to support a finding that the respondent, the child, or MacDonal J. have any intentions of seeking such a reinstatement before the petitioner becomes eighteen years old on March 1, 2015.<sup>21</sup>

Accordingly, we conclude that the court's failure to find that reunification with the respondent was not viable due to neglect under state law was erroneous as a matter of law because it was internally inconsistent with the court's dispositional order on the neglect petition, which transferred the custody and guardianship of the petitioner to MacDonal J.

## II

The petitioner's second claim is that the court erred when it failed to find that it is in the best interest of the petitioner to remain in the United States and not to be returned to his home country of Guatemala. The petitioner asserts that the dispositional facts found by the court do not support this conclusion and that the court applied an incorrect legal standard. We agree.

"To determine whether a custodial placement is in the best interest of the child, the court uses its broad discretion to choose a place that will foster the child's interest in sustained growth, development, well-being, and in the continuity and stability of [the child's] environment." (Internal quotation marks omitted.) *In re Averiella P.*, 146 Conn. App. 800, 803, 81 A.3d 272 (2013). In exercising this discretion and making its determination that transferring custody and guardianship of the petitioner to MacDonal J. was in the petitioner's best interest, the court recognized, on the one hand, that in the United States, under the care of MacDonal J., the petitioner's physical and medical needs are cared for appropriately. The court also recognized that the petitioner is "going to school and . . . he's not required to work." On the other hand, the court found that in Guatemala, the petitioner "suffer[ed] some emotional stress and dreams" due to threats and harassment that he experienced and that he missed half of the school day because he was working in the fields in the afternoon. The court also noted that the respondent consented to MacDonal J.'s assumption of the petitioner's custody and guardianship and that the petitioner considered him as an older brother and a father figure. The court concluded, "I have before me a seventeen year old boy who does not want to be in [the department's] care and does not want to go to a foster home, even though he was offered incentives like a free college education. He wants to stay with his cousin who is a family member . . . . I have to do what I feel is in his best interest. The court is going to find it's in the child's best interest that custody and guardianship of the child be vested in MacDonal J., whom I find to be—based on his actions and the care and affection that he's shown for his cousin, and the fact that he stepped [up] as a parent, is a suitable and worthy caretaker."

Despite these best interest findings, the court, illogically and inconsistently, refused to find that a return to Guatemala was not in the petitioner's best interest based only on findings that he would not be homeless or at risk of physical harm if he went back. The court stated: "I cannot find that it's in his best interest to remain in the United States and not be returned because that doesn't comply with the facts. He would be treated no differently than anyone else if he went back, and his main concern [about threats that were made against him by a neighbor in Guatemala] were never effectuated

against anyone even though [the neighbor] made them often.”

The petitioner’s motion and the federal SIJS statute require the court to consider whether being returned to Guatemala is in the juvenile’s best interest, not to find whether the juvenile would be physically harmed if returned. See *Matter of E.G.*, 2009 N.Y. Misc. LEXIS 2172, \*\*\*6 (N.Y. Fam. Ct. August 14, 2009) (decision without published opinion, 24 Misc. 3d 1238, 899 N.Y.S.2d 59 [N.Y. Fam. Ct. 2009]) (“[i]n making special findings, the Family Court is not required to make a determination as to whether the minor child would be at risk of harm if returned to the country of origin; the Court needs only to find that return would not be in the child’s best interest”). The court did not make any findings as to the benefits for the petitioner of being returned to Guatemala rather than remaining in the United States. The court also ignored the fact that there is no proposed plan in place for return of the petitioner to Guatemala. Without a plan, or continuing authority to order one to address past neglect and fully investigate the respondent’s current living conditions and ability to care for the petitioner, there is no basis to conclude that return to Guatemala would be in his best interest. Accordingly, we conclude that this finding is clearly erroneous.

A sufficient consideration of the petitioner’s best interest requires the broader approach the court used in determining that the transfer of custody and guardianship to his cousin was in his best interest. With the exception of the findings that the court believed the respondent would take the petitioner back, and that one of the perpetrators of the threats to the petitioner in Guatemala “really has harmed no one,” every single factual finding made by the court supports the court’s first conclusion: that it is in the petitioner’s best interest to remain in the United States in the custody and guardianship of MacDonal J.

There is no factual or legal basis for the court’s failure to find that it is not in the petitioner’s best interest to be returned to Guatemala because he “would be treated no differently than anyone else if he went back . . . .” Certainly, Connecticut law does not sanction or excuse neglect because other children in the community may be similarly neglected. The only relevant comparison is between the petitioner’s two options: remaining in the United States or being returned to Guatemala, and the court based its disposition and judgment on the first option. Hence, the dual findings that the petitioner’s remaining in the United States with his cousin and his returning to Guatemala would both be in the petitioner’s best interest are legally inconsistent and, therefore, clearly erroneous as a matter of law.

Under these circumstances, the proper remedy is to reverse the judgment of the trial court insofar as it

denied the petitioner's motion for a best interest finding and to remand the case with direction to grant the motion, which encompasses findings related to reunification and whether the petitioner should remain in the United States. As part of an appropriate remedy, we will direct the court to comply with our remand order in an expeditious manner to ensure that the requisite SIJS findings can be made before March 1, 2015, the petitioner's eighteenth birthday.<sup>22</sup>

The judgment is reversed only as to the denial of the petitioner's motion for a best interest finding, and the case is remanded with direction to grant the motion, and specifically to make the following findings: (1) reunification with one or both parents is not viable due to the fact that the petitioner has been neglected, and (2) it is in the best interest of the petitioner to remain in the United States and to not be returned to his home country of Guatemala. This order shall be complied with expeditiously so as to insure that the requisite SIJS findings can be made before March 1, 2015. The judgment is affirmed in all other respects.

In this opinion the other judges concurred.

\* In accordance with the spirit and intent of General Statutes § 46b-142 (b) and Practice Book § 79a-12, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the Appellate Court.

\*\* December 16, 2014, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

<sup>1</sup> See H. Park, "Children at the Border," *The New York Times*, Oct. 21, 2014, available at [http://www.nytimes.com/interactive/2014/07/15/us/questions-about-the-border-kids.html?\\_r=0](http://www.nytimes.com/interactive/2014/07/15/us/questions-about-the-border-kids.html?_r=0) (last accessed December 3, 2014).

<sup>2</sup> Section 1101 (a) (27) (J) of title 8 of the United States Code provides: "[A]n immigrant who is present in the United States—

"(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

"(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

"(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

"(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

"(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter . . . ." 8 U.S.C. § 1101 (a) (27) (J) (Supp. 2012).

<sup>3</sup> On April 28, 2014, the court entered an adjudication of neglect upon the default of the respondent without making any specific factual findings and, immediately thereafter, considered evidence as to the dispositional phase. As a result, the court adjudicated the child neglected in accordance with the allegations and grounds alleged in the amended verified petition and the accompanying summary of facts, both verified by oath. The summary of facts is incorporated by reference into the allegations in a neglect petition. See Practice Book § 33a-1 (b). "Child protection proceedings are civil matters. . . . In civil matters [t]he entry of a default constitutes an admission

by the defendant of the truth of the facts alleged in the complaint.” (Citation omitted; internal quotation marks omitted.) *In re Natalie J.*, 148 Conn. App. 193, 207, 83 A.3d 1278, cert. denied, 311 Conn. 930, 86 A.3d 1056 (2014). In this case, when the respondent failed to appear and to contest the neglect petition, the court was permitted to take the facts contained in the pleadings to be true and to rely on those facts in making its decision as to adjudication.

<sup>4</sup> There was evidence before the court that a “coyote” is a person paid to guide children like the petitioner and other persons to and across the United States border. The petitioner never knew the coyote’s actual name.

<sup>5</sup> According to the release form, federal authorities considered MacDonal J. “a family friend,” but his father is a brother of the petitioner’s father.

<sup>6</sup> General Statutes § 46b-129 (a) provides in relevant part: “Any . . . child or such child’s representative or attorney or a foster parent of a child, having information that a child or youth is neglected, uncared-for or abused may file with the Superior Court that has venue over such matter a verified petition plainly stating such facts as bring the child or youth within the jurisdiction of the court as neglected, uncared-for or abused within the meaning of section 46b-120, the name, date of birth, sex and residence of the child or youth, the name and residence of such child’s parents or guardian, and praying for appropriate action by the court in conformity with the provisions of this chapter. Upon the filing of such a petition . . . the court shall cause a summons to be issued requiring the parent or parents or the guardian of the child or youth to appear in court at the time and place named . . . and the court shall further give notice to the petitioner and to the Commissioner of Children and Families of the time and place when the petition is to be heard not less than fourteen days prior to the hearing in question.”

<sup>7</sup> The commissioner, in her brief, asserts that § 46b-129 (a), which entitles her to notice regardless of whether she is the petitioner, automatically establishes her party status in every neglect petition. There is no appellate authority on this point, and we note, that in some instances, the commissioner has moved to intervene when she did not initiate the neglect proceeding. See, e.g., *In re Jose B.*, 303 Conn. 569, 571, 34 A.3d 975 (2012). In addition, the commissioner cites Practice Book § 26-1 (j), which defines “parties” as “[a]ny person . . . whose legal relationship to the matter pending before the judicial authority is of such a nature and kind as to mandate the receipt of proper legal notice as a condition precedent to the establishment of the judicial authority’s jurisdiction to adjudicate the matter pending before it . . . .” The record reflects that a representative from the Office of the Attorney General, which represents the commissioner in child protection proceedings, was present at the initial plea hearing, on September 10, 2013. The petitioner filed a motion to cite the commissioner in as a necessary party, but there is no record of that motion being granted by the court. No assistant attorney general filed a formal appearance on behalf of the commissioner in this case until after this appeal was filed, but the court issued an order to the commissioner to conduct a home study of the proposed guardian and an assistant attorney general attended and participated in pretrial hearings, several case status conferences, and the consolidated trial proceedings. The assistant attorney general entered into stipulations, conducted direct and cross examinations of witnesses, and presented a closing argument.

The petitioner did not object to the commissioner’s indisputably party-like participation during any of the proceedings below, but maintains in this appeal that the commissioner is not a party. The petitioner concedes, however, in his reply brief, that if allowing the commissioner’s involvement in the trial was error, it was harmless error. Because we are ruling in favor of the petitioner on the claims he raised on appeal, we need not address the appropriateness of the commissioner’s participation in the consolidated hearing and whether it was, as the commissioner claims on appeal, structural error for the commissioner to participate in the portion of the consolidated proceeding that dealt with the petitioner’s motion for a best interest finding.

<sup>8</sup> At trial, the commissioner offered into evidence a report captioned “Court Update,” dated March 14, 2014, which was authored by James Craig, a Department of Children and Families (department) social worker. Counsel for the commissioner referred to this update as a “guardianship study.” Also in evidence was a “Psychosocial Assessment Report” written by Monarae Scales, a licensed clinical social worker and child and family therapist, which was offered by the petitioner.

<sup>9</sup> Removal proceedings for the petitioner are pending in the Hartford Immigration Court.

<sup>10</sup> “Neglect proceedings, under . . . [General Statutes] § 46b-129, are comprised of two parts, adjudication and disposition. . . . During the adjudicatory phase, the court determines if the child was neglected.” (Internal quotation marks omitted.) *In re Ja-lyn R.*, 132 Conn. App. 314, 318, 31 A.3d 441 (2011). “In determining the disposition portion of the neglect proceeding, the court must decide which of the various custody alternatives [permitted under § 46b-129 (j)] are in the best interest of the child.” *Id.*, 323.

<sup>11</sup> Neither the petitioner’s appendix nor the record contain a written memorandum of decision or a signed transcript setting forth the court’s reasons for granting the petition or denying the motion for a best interest finding. See Practice Book § 64-1 (a) (4). The commissioner did not file an appendix. Although we frequently have declined to review claims on appeal due to an appellant’s failure to provide a memorandum of decision that complies with our rules of practice, we are able to review the present claims on the basis of the unsigned transcript filed in this matter. See *In re Diamond J.*, 121 Conn. App. 392, 398–99, 996 A.2d 296, cert. denied, 297 Conn. 927, 998 A.2d 1193 (2010).

<sup>12</sup> See footnote 3 of this opinion.

<sup>13</sup> Craig testified that he believed, because the respondent loves the petitioner, she would take the petitioner back if he were returned to Guatemala, but also stated that her preference was that he stay in the United States and she did not say that she wanted to be reunified with him.

<sup>14</sup> The court found that the petitioner’s father is deceased and that, therefore, reunification with his father is not viable.

<sup>15</sup> “A parent abandons a child if the parent has failed to maintain a reasonable degree of interest, concern or responsibility as to the welfare of the child . . . . Maintain implies a continuing, reasonable degree of concern.” (Citation omitted; internal quotation marks omitted.) *In re Ilyssa G.*, 105 Conn. App. 41, 46–47, 936 A.2d 674 (2007), cert. denied, 285 Conn. 918, 943 A.2d 475 (2008). The respondent’s actions in encouraging the petitioner’s arduous, illegal journey can be compared to the action of a mother who abandons her children on a doorstep, leaving him dependent on the kindness of strangers, and exposing him to unknown risks without a realistic plan to insure his welfare and protection. In addition, she has not provided the petitioner with any support since he left Guatemala two years ago. In these circumstances, the neglect ground of abandonment could have been asserted in the petition in addition to the other grounds alleged. See General Statutes § 46b-120 (6).

<sup>16</sup> Once a child is committed to the commissioner, the commissioner “shall make reasonable efforts to reunify a parent with a child unless the court (1) determines that such efforts are not required . . . or (2) has approved a permanency plan other than reunification. . . .” General Statutes § 17a-111b (a). “[T]he prior provision of specific steps is required in *any* case in which the commissioner seeks to terminate parental rights on the ground of a parent’s failure to rehabilitate . . . .” (Emphasis in original.) *In re Elvin G.*, 310 Conn. 485, 506, 78 A.3d 797 (2013). Under federal regulations promulgated pursuant to the Adoption and Safe Families Act of 1997, 42 U.S.C. §§ 620 through 632 and 670 through 679, a finding of reasonable efforts to finalize a permanency plan may encompass reasonable efforts to reunify the family following placement in foster care. See 45 C.F.R. § 1356.21 (b) (2) (i).

<sup>17</sup> The respondent, in fact, has never expressed a desire to be reunified with the petitioner. She expressed to Craig that she prefers he remain in the United States in the custody of MacDonal J.

<sup>18</sup> The specific steps form, JD-JM-106 (Rev. January, 2011), requires that the court order, and both the commissioner and the respondent acknowledge, the issuance of “preliminary specific steps” upon the issuance of an order of temporary custody to the commissioner, and “final specific steps” as part of a disposition committing a child to the custody and care of the commissioner. See B. Levesque & D. Hrelac, 1A Connecticut Practice Series: Connecticut Juvenile Law (2013-14 Ed.) pp. 279–80.

<sup>19</sup> A “youth” is defined as “any person sixteen or seventeen years of age who has not been legally emancipated . . . .” General Statutes § 46b-120 (2).

A “child” is defined as “any person under eighteen years of age who has not been legally emancipated . . . .” General Statutes § 46b-120 (1).

<sup>20</sup> Significantly, the commissioner did not request that the court commit the petitioner to her care and custody so the court could confer on her the authority to assist in the implementation of the reunification of the petitioner with the respondent.

<sup>21</sup> “[A] guardian is . . . entitled to assert the legal rights of [his or] her

ward. . . . [I]t is clear as a general proposition that guardianship includes both the duty and responsibility to safeguard a minor's best interest as well as to protect the minor's legal rights." (Internal quotation marks omitted.) *In re Tayquon H.*, supra, 76 Conn. App. 698–99.

<sup>22</sup> If the court does not issue the requisite findings before the date that the petitioner attains the age of eighteen, the court will lack statutory authority to provide him his requested relief. See *In re Jessica M.*, 303 Conn. 584, 587–88, 35 A.3d 1072 (2012).

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